



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

AUG 20 2012

Melanie Sloan, Executive Director
Citizens for Responsibility and Ethics in Washington
1400 Eye Street, N.W., Suite 450
Washington, D.C. 20005

RE: MUR 6234

Dear Ms. Sloan:

This is in reference to the complaint you filed with the Federal Election Commission ("Commission") on November 20, 2009, concerning the Friends of Mary Landrieu, Inc. and Nancy Marsiglia in her official capacity as treasurer ("Landrieu Committee"). The Commission dismissed allegations that the Landrieu Committee violated 11 C.F.R. § 103.3(b)(1) or (2) and the related reporting requirements by disgorging contributions totaling \$25,300 to the U.S. Treasury.

The Commission found that there was reason to believe that Arlen B. Cenac, Jr. knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(3), 441b, and 441f by making contributions in the names of others to the Landrieu Committee and David Vitter for U.S. Senate ("Vitter Committee"). The Commission also found reason to believe that Cenac Towing Co., LLC, as successor-in-interest to Cenac Towing Co., Inc. ("Cenac Towing"), violated 2 U.S.C. § 441b and 441f by making prohibited contributions in the names of others to the Vitter Committee, and conducted an investigation in this matter. On August 15, 2012, a conciliation agreement with Mr. Cenac and Cenac Towing was accepted by the Commission.

The Commission also found reason to believe that Roger Beaudeau, Travis Breau, Ena Breau, Kurt Fakier, Andrew Soudelier, and Renee Soudelier violated 2 U.S.C. § 441f. On August 15, 2012, the Commission determined to take no further action as to these respondents. Accordingly, the Commission closed the file in this matter on August 15, 2012.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). A copy of the conciliation

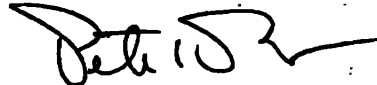
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Melanie Sloan, Executive Director
MUR 6234
Page 2 of 2

agreement with Mr. Cenac and Cenac Towing is enclosed for your information, as well as the Factual & Legal Analysis for the Landrieu Committee.

The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of the Landrieu Committee. *See* 2 U.S.C. § 437g(a)(8). If you have any questions, please contact Marianne Abely, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg", with a stylized flourish at the end.

Peter G. Blumberg
Assistant General Counsel

Enclosures

Conciliation Agreement (1)
Factual and Legal Analyses (1)

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Arlen B. Cenac, Jr. and) MUR 6234
Cenac Towing Co., LLC,)
as successor-in-interest to Cenac Towing Co., Inc.)

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint. The Federal Election Commission ("Commission") found reason to believe that Respondent Arlen B. Cenac, Jr. knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(3), 441b, and 441f and also found that Respondent Cenac Towing Co., LLC, as successor-in-interest to Cenac Towing Co., Inc., knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. During the relevant time period, Respondent Arlen B. Cenac, Jr. was the president and sole owner of Cenac Towing Co., Inc. ("Cenac Towing") and numerous other related companies

1 headquartered in Houma, Louisiana. During the relevant time period, Cenac Towing was
2 registered as a corporation in the State of Louisiana.

3 2. Friends of Mary Landrieu, Inc. ("Landrieu Committee") is a political committee
4 within the meaning of 2 U.S.C. § 431(4), and is the principal campaign committee of Senator
5 Mary Landrieu, who represents the State of Louisiana.

6 3. David Vitter for U.S. Senate ("Vitter Committee") is a political committee within the
7 meaning of 2 U.S.C. § 431(4), and is the principal campaign committee of Senator David Vitter,
8 who represents the State of Louisiana.

9 **Applicable Law**

10 4. The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that no
11 person shall make contributions to a candidate for federal office or his or her authorized political
12 committee, which in the aggregate exceed \$2,300 for the primary and general elections,
13 respectively. 2 U.S.C. § 441a(a)(1)(A) (2008 election cycle limit). Individuals are also subject
14 to a biennial limit of \$42,700 to federal candidates. 2 U.S.C. § 441a(a)(3) (2008 election cycle
15 limit).

16 5. The Act further prohibits any person from making a contribution in the name of
17 another and from knowingly permitting his or her name to be used to effect such a contribution.
18 2 U.S.C. § 441f.

19 6. Commission regulations at 11 C.F.R. § 110.4(b)(2)(i) and (ii) provide examples of
20 making a contribution in the name of another that include (1) giving money or anything of value,
21 all or part of which was provided to the contributor by another person (the true contributor)
22 without disclosing the source of money or the thing of value to the recipient candidate or
23 committee at the time the contribution is made, or (2) making a contribution of money or

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1 anything of value and attributing as the source of the money or thing of value another person
2 when in fact the contributor is the source.

3 7. The Act prohibits corporations from making contributions from their general treasury
4 funds in connection with the election of any candidate for federal office. Further, it is unlawful
5 for a corporate officer to consent to a corporation making a federal contribution. 2 U.S.C.
6 § 441b(a).

7 8. Cenac is an experienced political contributor who, between 1987 and 2008, made no
8 fewer than 67 contributions exceeding \$71,000 to 26 federal political committees.

9 **Arlen B. Cenac, Jr. and Cenac Towing's Contributions to the Vitter Committee**

10 9. In February 2008, Cenac, using a check drawn on an account held by Cenac Towing,
11 made contributions in the names of others to the Vitter Committee totaling \$15,000.

12 10. On or about February 4, 2008, Cenac contacted Whitney National Bank ("Bank")
13 regarding the purchase of cashier's checks. On that same day, Cenac's secretary arrived at the
14 Bank with a \$15,000 Cenac Towing check, dated January 31, 2008. Through his secretary,
15 Cenac directed the Bank to prepare six cashier's checks made payable to David Vitter for U.S.
16 Senate, and listed the names and addresses of the "remitters" and the specific amounts to appear
17 on each check. The listed "remitters" were: Mr. & Mrs. Berwick Duval (\$2,500); Mr. & Mrs.
18 Arlen Cenac, Sr. (\$2,500); Mr. & Mrs. Kurt Fakier (\$2,500); Mr. & Mrs. Tim Solso (\$2,500);
19 Mr. Arlen Cenac, Jr. & Guest (\$2,500); and Mr. Chet Morrison & Guest (\$2,500). The Bank
20 prepared the checks and, as directed by Cenac, returned the cashier's checks to the secretary.
21 Cenac caused the six cashier's checks to be delivered to the Vitter Committee on or about
22 February 16, 2008. The five men other than Cenac listed on these cashier's checks, are either

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business associates of, related to, or employed by Cenac. The women listed as remitters are either related to Cenac or married to one of the men listed.

Arlen B. Cenac's Contributions to the Landrieu Committee

11. In April 2008, Cenac made contributions in the names of others to the Landrieu Committee totaling \$25,300. Cenac had already made a \$2,300 contribution to the Landrieu Committee on January 31, 2008.

12. On April 24, 2008, Cenac contacted the Bank regarding the purchase of cashier's checks. On that same day, Cenac's secretary arrived at the Bank with a personal check in the amount of \$25,300. Through his secretary, Cenac directed the Bank to prepare six cashier's checks made payable to Friends of Mary Landrieu, and listed the names and addresses of the "remitters" and the specific amounts to appear on each check. The listed "remitters" were: Mr. & Mrs. Roger Beaudean (\$4,600); Mr. & Mrs. Travis Breau (\$4,600); Mr. & Mrs. Kurt Fakier (\$4,600); Mr. James Hagen III (\$2,300); Mr. & Mrs. Andrew Soudelier (\$4,600); and Mr. & Mrs. Melvin Spinella (\$4,600). The Bank prepared the checks and, as directed by Cenac, returned the cashier's checks to the secretary. Cenac caused the six cashier's checks to be delivered to the Landrieu Committee on or about May 24, 2008. All six men listed on these cashier's checks were employed as managers in one of the following companies, which are owned by or associated with Cenac: Cenac Towing; Cenac Offshore, LLC; CTCO Shipyard of Louisiana; Southern Fabrication, LLC; Bayou Black Electric Supply, LLC; and Louisiana Paint & Marine Supply Company. The women listed as remitters are the spouses, respectively, of the men listed.

13. Roger Beaudean, Kurt Fakier, Andrew and Renee Soudelier, and Travis and Ena Breau signed and returned Contributor Information Forms to the Landrieu Committee falsely

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1 verifying that the funds used to make the contributions to the Landrieu Committee were drawn
2 on a personal or joint account. Cenac contends that he has no knowledge about these issues, but
3 agrees that the records reflect such facts. The record evidence shows that Fakier's and the
4 Soudeliers' Contribution Information Forms were faxed to the Landrieu Committee from the
5 same Cenac Towing fax number and Beaudean's form was faxed to the campaign by an
6 unnamed person at Cenac Towing.

7 V. Respondents committed the following violations:

8 1. Cenac and Cenac Towing knowingly and willfully violated 2 U.S.C. § 441b(a) by
9 making corporate contributions.

10 2. Cenac and Cenac Towing knowingly and willfully violated 2 U.S.C. § 441f by making
11 contributions in the name of other persons.

12 3. Cenac knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(3) by
13 making excessive contributions.

14 VI. Respondents will cease and desist from violating 2 U.S.C. §§ 441b(a) and 441f and
15 Cenac will cease and desist from violating 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(3).

16 VII. Respondents will pay a civil penalty to the Federal Election Commission in the
17 amount of One Hundred and Seventy Thousand dollars (\$170,000), pursuant to 2 U.S.C.
18 § 437g(a)(5)(B). Further, Respondents waive the right to any refund from the recipient political
19 committees of any and all of the contributions referenced in this agreement.

20 VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C.
21 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance
22 with this agreement. If the Commission believes that this agreement or any requirement thereof

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1 has been violated, it may institute a civil action for relief in the United States District Court for
2 the District of Columbia.

3 IX. This agreement shall become effective as of the date that all parties hereto have
4 executed same and the Commission has approved the entire agreement.

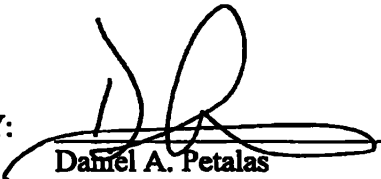
5 X. Respondents shall have no more than 30 days from the date this agreement becomes
6 effective to comply with and implement the requirements contained in this agreement and to so
7 notify the Commission.

8 XI. This Conciliation Agreement constitutes the entire agreement between the parties on
9 the matters raised herein, and no other statement, promise, or agreement, either written or oral,
10 made by either party or by agents of either party, that is not contained in this written agreement
11 shall be enforceable.

12 FOR THE COMMISSION:

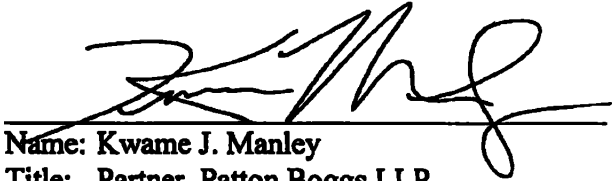
13 Anthony Herman
14 General Counsel

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16
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18 BY:


19 Daniel A. Petalas
20 Associate General Counsel
21 for Enforcement

8/20/12
Date

22 FOR THE RESPONDENTS:

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25 Name: Kwame J. Manley
26 Title: Partner, Patton Boggs LLP
Counsel for Respondents

7/30/12
Date

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Friends of Mary Landrieu, Inc. and,
and Nancy Marsiglia, in her official
capacity as treasurer

MUR: 6234

I. INTRODUCTION

This matter was generated by a complaint filed by Citizens for Responsibility and Ethics in Washington ("CREW"). See 2 U.S.C. § 437g(a)(1).

The complaint alleges that the Friends of Mary Landrieu, Inc. and Nancy Marsiglia, in her official capacity as treasurer, ("Landrieu Committee") violated the Federal Election Campaign Act of 1971, as amended, ("the Act") by disgorging \$25,300 in illegal contributions to the United States Treasury ("Treasury"), instead of refunding the contributions to the contributors. 11 C.F.R. § 103.3(b)(1) & (2). The complaint also asserts that the Landrieu Committee should have disclosed the required refunds to those contributors in accordance with 11 C.F.R. § 104.3(b)(2)(v)(A). In addition to requesting that the Commission find reason to believe that the Landrieu Committee violated the Act and impose appropriate sanctions, CREW requests that any information the Commission obtains during the course of its inquiry be referred to the Department of Justice for investigation of possible violations of 2 U.S.C. §§ 441b(a) and 441f.

The Landrieu Committee denies violating the Act or Commission regulations with respect to disbursing the \$25,300 to the Treasury and urges the Commission to dismiss the matter. The Landrieu Committee states that because it had sufficient information to question the legality of these contributions and was unable to determine the identity of the original contributor(s), its decision to disgorge the funds to the Treasury was

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MUR 6234
 Friends of Mary Landrieu, Inc.
 Factual and Legal Analysis

permissible and compatible with the guidance provided by the Commission in both Advisory Opinions ("AOs") and in Matters Under Review ("MURs").

II. FACTUAL BACKGROUND

In May of 2008, the Landrieu Committee received a series of six contributions payable by cashier's checks issued by Whitney National Bank in New Orleans, LA. The contributions, which totaled \$25,300, were forwarded to the campaign by a Louisiana attorney who the Landrieu Committee has declined to identify. At some point after receiving these funds, the Landrieu Committee became suspicious that the contributions were from a prohibited source or had been made in the name of another because they were received as sequentially numbered checks from the same bank.¹ The Landrieu Committee, which apparently obtained the names of the putative contributors from the Louisiana attorney, attempted to confirm the legality of each contribution by contacting these individuals by mail and telephone. One of these individuals told the Committee that she had no knowledge of making any contribution to the campaign. Based on this information, the Landrieu Committee concluded that there was "sufficient basis to question the lawfulness" of each contribution forwarded by the Louisiana attorney. The Landrieu Committee states that it "took immediate ameliorative action" by making a \$25,300 disbursement to the Treasury because it was unable to discover the identities of

¹ The Landrieu Committee did not identify the Louisiana attorney who forwarded the subject contributions, specify from what source it obtained the names of the individual contributors, provide any details regarding the contributions such as the amounts of each contribution and the date of receipt, or describe what efforts were made to discover the identity of the original contributor(s). The Landrieu Committee stated that the sequential numbering of the contribution checks from the same bank caused it to seek to confirm the legality of the six contributions forwarded by the same Louisiana attorney.

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MUR 6234
 Friends of Mary Landrieu, Inc.
 Factual and Legal Analysis

the original contributors. The Landrieu Committee described the August 7, 2008, disbursement in its 2008 Pre-Primary report as a "donation."²

CREW contends that the Landrieu Committee violated 11 C.F.R. § 103.3(b)(1) & (2) when it disgorged the \$25,300 to the Treasury rather than return the funds to the contributors. According to the complaint, sections 103.3(b)(1) and (2) require committees to return contributions in the contributions when they suspect or later discover that a contribution is illegal. Citing a series of AOs, the complaint contends that the Commission does not permit political committees to disgorge illegal contributions at will, but only permits such disgorgement in "one unique situation" when the committee learns that the Justice Department is pursuing a criminal investigation or prosecution relating to the contributions.

The Landrieu Committee denies that disgorging the \$25,300 to the Treasury violated the Act or Commission regulations. According to the Landrieu Committee, it followed Commission advice in making a disbursement in an amount equal to the contributions to the Federal government, state or local governments, or to a qualified charity when there is a "factual dispute as to the actual source of the contributions." The Landrieu Committee contends that its decision to disgorge the contributions was permissible because it had sufficient reason to question the legality of the contributions and could not determine the identity of the original contributor(s). The Landrieu

² An online news article attached to the complaint attempts to link the donation to a Senate Ethics Committee investigation of Senator Landrieu's 2001 request for an earmark for the Voyager Expanded Learning literacy program, which also apparently stemmed from a CREW complaint. (Arthur Delaney, *Why Did Sen. Landrieu's Campaign Donate \$25,300 to the Government*, HUFFINGTON POST.COM, November 13, 2009). Nevertheless, it does not appear that anyone who worked for Voyager Expanded Learning or its affiliate Best Associates contributed to the Landrieu Committee in May of 2008.

MUR 6234
 Friends of Mary Landrieu, Inc.
 Factual and Legal Analysis

Committee asserts that in similar cases, the Commission has advised political committees to disgorge contributions of questionable legality where identified donors do not confirm their legality and where the committee cannot determine the identity of the original contributor. Citing AOs 1995-19 (Indian-American Leadership Fund) and 1991-39 (D'Amato), the Landrieu Committee contends that the Commission has "never required" evidence of indictment, conviction, or formal investigation before advising political committees to disgorge illegal contributions. The Landrieu Committee also notes that in enforcement cases such as MUR 5279 (Kushner)(2004) the Commission has requested that political committees "either refund or *disgorge*" illegal contributions within 30 days even if they know the identity of the contributor. (emphasis in original).

III. LEGAL ANALYSIS

During the 2008 election cycle, the Act provided that no person shall make contributions to a candidate for federal office or his or her authorized political committee, which in the aggregate exceeded \$2,300 for the primary and general elections, respectively. 2 U.S.C. § 441a(a)(1)(A). Under the Act, corporations and national banks are prohibited from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for federal office. 2 U.S.C. § 441b(a). Corporate officers are prohibited from consenting to contributions made by the corporation or national bank. *Id.* It is unlawful for a political committee to accept or receive any contribution prohibited by 2 U.S.C. § 441b(a). The Act also provides that no person shall make a contribution in the name of another person. 2 U.S.C. § 441f. It is a violation of the Act to knowingly help or assist any person in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(iii). Political committees are not liable for the

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MUR 6234
 Friends of Mary Landrieu, Inc.
 Factual and Legal Analysis

receipt of impermissible contributions provided the committees adhere to the safe harbor regulations set forth in 11 C.F.R. § 103.3(b)(1) & (2).

Committee treasurers are responsible for examining all contributions for evidence of illegality. 11 C.F.R. § 103.3(b). Contributions that, when received, present genuine questions as to whether they were made by corporations, labor organizations, Federal contractors, or foreign nationals may either be deposited into a campaign depository or returned to the contributor within ten days of receipt. 11 C.F.R. § 103.3(b)(1). If any such contribution is deposited, the treasurer shall make his or her best efforts to determine the legality of the contribution and make a refund if it cannot be determined to be legal. *Id.* The treasurer is deemed to have made best efforts only if s/he made at least one written or oral inquiry concerning the legality of the contribution. *Id.* Evidence of legality includes a written explanation from the contributor, or an oral explanation which is noted by the treasurer in a subsequent memorandum. Explanation and Justification, *Deposits of Receipts and Disbursements*, 52 Fed. Reg. 6, (Jan. 9, 1987) at 768. If the contribution cannot be determined to be legal, the treasurer shall, within thirty days of receipt, refund the contribution to the contributor. 11 C.F.R. § 103.3(b)(1).

When the treasurer of a political committee deposits a contribution and, based on new evidence not available to the political committee at the time of receipt and deposit, discovers that it came from a prohibited source or was made in the name of another, the treasurer shall refund the contribution within thirty days of the date on which the illegality was discovered. 11 C.F.R. § 103.3(b)(2). Political committees are required to disclose contribution refunds as disbursements on their periodic reports to the Commission. 2 U.S.C. § 434(b)(4)(F) & (5)(E); 11 C.F.R. § 104.3(b)(2)(v)(A).

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MUR 6234
 Friends of Mary Landrieu, Inc.
 Factual and Legal Analysis

In several early Advisory Opinions, the Commission advised political committees that they must refund illegal contributions to the person or entity that was the actual source of those contributions. See AO 1984-52 (Russo) and AO 1989-5 (Ray) (contributions financed by corporations through sham employee bonuses should be refunded to the corporate sources and not the employee conduits). Contrary to the assertions made in the complaint, however, the Commission has not always required refunds pursuant to section 102.3(b) and has never made the involvement of the Justice Department a prerequisite for disgorgement. The Commission has recommended disgorgement where the available evidence raised doubts as to the legality of the contribution, but there was a factual dispute as to the actual source of the contribution. AO 1995-19 (Indian-American Leadership Fund) and AO 1991-39 (D'Amato). In AO 1996-5 (Jay Kim for Congress Committee), the Commission gave the political committee the option of disgorging the funds to the Treasury instead of the original contributor, a corporation that had pled guilty to making illegal contributions. AO 1996-5 explicitly superseded AOs 1984-52 and 1989-5 and earlier Advisory Opinions to the extent they determined that payments could only be made to the entity that was the actual source of the illegal contribution.

The Commission also has experience with disgorgements in the MUR context. It has been the Commission's practice during conciliation to negotiate the disgorgement of illegal contributions to the Treasury in order to discourage the underlying violations. See MUR 5948 (Critical Health)(2008), MUR 5645 (Highmark)(2007), MUR 5398 (LifeCare)(2005) and MUR 5187 (Mattel)(2002). However, political committees have

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MUR 6234
 Friends of Mary Landrieu, Inc.
 Factual and Legal Analysis

also been given the option of refunding the illegal contributions or disgorging the contributions. See MUR 5296 (Kushner)(2004).³

The available information indicates that the Landrieu Committee received contributions in May 2008 that it came to believe were prohibited or made in the name of another. Although there is no information as to the specific date(s) that it became aware of the contributions' likely illegality, there is no reason to question that it took remedial steps to rid itself of the funds within the applicable regulatory timeframes. See 11 C.F.R. § 103.3(b). While section 103.3(b) mandates refunds to contributors, requiring that the Landrieu Committee refund these illegal contributions would be difficult, given the Committee's stated inability to locate the original source(s) of the funds and because recent Commission decisions have permitted disgorgements. In the numerous AOs and MURs referenced *supra* at 6, the Commission has advised or instructed political committees to disgorge illegal contributions even in cases where the name(s) of the original contributor(s) were known.

³ The Commission's practices with respect to disgorgements and refunds were at issue in *Fireman v. United States*, 44 Fed. Cl. 528 (1999). In *Fireman*, a political committee, in reliance on AO 1996-5, disgorged to the Treasury illegal contributions it had received from Simon C. Fireman and his company after the political committee's treasurer learned that Fireman had pled guilty to making illegal contributions. *Id.* at 530. Fireman filed suit against the government to recover the amount of the disgorged illegal contributions from the Treasury, arguing that Commission regulations required political committees to refund illegal contributions to the contributors, and that any AOs permitting disgorgement instead of refund are contrary to Commission regulations and beyond the Commission's authority. While the Court did not explicitly rule on whether the Commission exceeded its authority in AO 1996-5, it did find that Fireman "presented a prima facie case that the FEC acted without authority in its decision in AO 1996-5." *Id.* at 537. The court further stated that the language in the regulation "stands clear enough on its face" and that "11 C.F.R. 103.3(b)(2) authorizes the return of illegal campaign money." *Id.* at 538-9. Because the Commission had changed its position from earlier AOs, the Court noted that the "new interpretation is entitled to less deference." *Id.* at 550 (citing *Paully v. Bush*, 501 U.S. 680, 698 (1991)). The *Fireman* decision concludes that section 103.3(b)(2) essentially confers a right or expectation on the contributor that its illegal refund will be refunded. After *Fireman*, the Commission began inquiring that contributors in MURs involving illegal contributions sign waivers of their refund rights when disgorgements were required. See MUR 6074 (Jacobs)(2008).

MUR 6234
Friends of Mary Landrieu, Inc.
Factual and Legal Analysis

Accordingly, the Commission dismissed the allegations that the Friends of Mary Landrieu, Inc. and Nancy Marsiglia, in her official capacity as treasurer, violated 11 C.F.R. § 103.3(b)(1) or (2) and the related reporting requirements by disgorging the contributions at issue in this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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